



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,669	07/28/2003	Keith L. Henk	N322.12-0001	7118

164 7590 11/29/2005  
KINNEY & LANGE, P.A.  
THE KINNEY & LANGE BUILDING  
312 SOUTH THIRD STREET  
MINNEAPOLIS, MN 55415-1002

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/628,669

Applicant(s)

HENK, KEITH L.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 8,15,17-28,35,40 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-14,16,29-34,36-39,41-45,47 and 48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3634

### **DETAILED ACTION**

This final Office action is in response to the amendment filed September 19, 2005 by which claims 1, 4, 6, 13, 29, 32, 37, 38, and 44 were amended.

#### ***Election/Restriction***

Claims 8, 15, 17-28, 35, 36, 40, and 46 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 25, 2005.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 9-14, and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,800,958 (Dorn '958).

Dorn '958 discloses a holding device comprising a first vertical element upright (18 - on left side of Figure 2) formed from a first rod and forming a first vertical plane (see Figure 3) defined by a plurality, i.e., at least three, corner portions, wherein at least one of the corner portions is a lower (at 20) rear portion, taken relative to the top of the device; a first horizontal extension (20) element formed from a portion of the first rod and extending from the lower rear portion, perpendicularly to the first vertical plane (see bottom middle of Figure 3); the first vertical element is triangular (see Figure 1); *with respect to claims 3 and 11*, the first vertical element having a first frictional surface secured thereto (unnumbered - rubber cap, similar to 13 at end of the element, shown in dashed lines in Figure 2) and the first horizontal extension element (20) having a second frictional surface secured thereto (unnumbered - rubber cap,

Art Unit: 3634

similar to 13 at end of the element, shown in solid lines in top middle portion of Figure 2); *with respect to claims 2, 4 and 10*, the device further comprising a second vertical element upright (18 - on right side of Figure 2) similar in design and shape to the first element that is triangular and parallel thereto; *with respect to claims 5 and 12*, the first horizontal extension element (20) and the second horizontal extension element are slidably connected (through 16 and 21) such that the elements (20) are capable of sliding in both a converging motion (solid lines in Figure 3) and a diverging motion (dashed lines in Figure 3) for adjusting the distance therebetween; *with respect to claims 6 and 13*, a first end stop (21) secured to the first element (20) and slidably (i.e., the end of 21 is wrapped over 20 and is considered to be slidable therealong) connected to the second element (20) and a second stop (21) secured to the second element (20) and slidably connected to the first element (20) wherein the first and second stop (21) provide a minimum and a maximum limit for the distance between the elements; *with respect to claims 9 and 16*, the first and second stops (20) comprise frictional means (i.e., a spring constitutes frictional means) for providing frictional resistance to the horizontal elements (20); *with respect to claims 7 and 14*, the stops are considered to define guide bushings.

With respect to the wherein clause (in the last 3 lines of claim 1), as can be seen from Figure 3 of Dorn '958, since element 19 is angled inwardly, when an item (17) is supported by the device, the horizontal extension (20) is not disposed beneath the item (17).

Claims 1, 29, 31, 32, and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 934,148 (Duff '148).

Duff '148 a holding device comprising a first vertical element upright (on left side of Figure 1) formed from a first rod (generally at D) and forming a first vertical plane defined by a

Art Unit: 3634

plurality, i.e., at least three, corner portions, wherein at least one of the corner portions is a lower (between B<sup>1</sup> and D<sup>1</sup>) rear portion, taken relative to the top of the device; a first horizontal extension (element B at the front of Figure 1, i.e., not including elements B in the middle and rear of Figure 1) element formed from a portion of the first rod and extending from the lower rear portion, perpendicularly to the first vertical plane; *with respect to claims 39 and 45*, the stops are considered to define guide bushings; *with respect to claims 29 and 37*, a horizontal support (B and B<sup>1</sup> at the front of Figure 1, i.e., not including elements B in the middle and rear of Figure 1) connected to the lower rear portion (between B<sup>1</sup> and D<sup>1</sup>) of the uprights wherein the uprights are separated by a distance determined in part by a length of the support (i.e., the distance is adjustable - see lines 15-17); *with respect to claim 32*, the support (B and B<sup>1</sup>) comprising a first shaft (B) connected to the lower rear portion of the first upright and a second shaft (B<sup>1</sup>) connected to the lower rear portion of the second upright whereby the shafts (B and B<sup>1</sup>) are slidable (through C and C<sup>1</sup>); *with respect to claims 38 and 44*, a stop (C and C<sup>1</sup>) are secured to the shafts (B and B<sup>1</sup>).

With respect to the wherein clause (in the last 3 lines of claim 1, lines 6-8 of claim 29, and lines 13-17 of claim 37), as can be seen from Figure 1 of Duff '148, since the elements B and B<sup>1</sup> at the front of Figure 1 and not including elements B and B<sup>1</sup> in the middle and rear of Figure 1, have been defined as the horizontal extension, when items are placed on the middle and rear elements B and B<sup>1</sup>, the horizontal extension (at the front of Figure 1), would not be disposed beneath the item. It is noted that items are capable of being stored and supported by only two of the three elements B in Duff '148.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30, 33, 34, 41-45, 47 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Duff '148, alone.

Duff '148 discloses the device as advanced above.

The claims differ from Duff '148 in requiring: (a) the stops to comprise frictional means for providing guided frictional resistance (claims 34, 41, and 47); (b) the uprights to comprise a frictional surface (claims 30, 33, 42, and 48); and (c) the first upright and the first shaft to be formed from a *first single formed rod* and second upright and the second shaft to be formed from a *second single formed rod* (claim 43).

*With respect to (a) and (b)*, although Duff '148 is silent as to the material from which the stops (C) and uprights (D) are made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the stops and uprights from a rubber material, thereby defining a frictional means, and allowing for increased securement and stability of the device when in use.

*With respect to (c)*, although Duff '148 does not explicitly state or show that the upright and respective shaft is formed from a single formed rod, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the first upright and the first shaft are considered to be formed from a *first single formed rod* and second upright and the second shaft are considered to be formed from a *second single formed rod*, since when taken apart the first shaft would be connected to the first upright, thereby allowing for ease in assembly.

***Response to Arguments***

Applicant's arguments (in the second full paragraph on page 13) filed September 19, 2005 have been fully considered but they are not persuasive.

*In particular*, applicant's arguments, with respect to Dorn '958, are not well-taken. Applicant has made a general statement pertaining to elements of Dorn '958 not at all utilized by the examiner in the rejection, e.g., elements 10 and 16. It is noted that element 20 of Dorn '958 has been defined by the examiner to be the horizontal extension 9discussion of which is advanced above).

*Further*, applicant's arguments concerning Duff '148, have been considered, but in view of applicant's amendment to the claims, these arguments are rendered moot. It is noted that the horizontal extension has been re-defined to only include the front elements B and B<sup>1</sup>, as advanced above.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

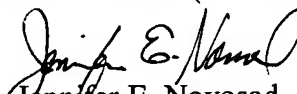
Art Unit: 3634

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

November 23, 2005